

**NOTICE OF DECISION**  
**Special Permit A3**

Certified Mail: 7018 1830 0000 1812 6257

**IN THE MATTER OF:**

**Applicant:** W/S/M Hingham Properties LLC.

**Premises:** The Derby Street Shoppes  
124 Old Derby Street  
100 Derby Street  
Hingham, MA 02043

**Date:** December 6, 2018

**Plan Reference:**

“Derby Street Shoppes Expansion 100 Derby Street Hingham, Massachusetts”, dated March 9, 2018 and revised to July 13, 2018, prepared by the BSC Group, 803 Summer Street, Boston, Massachusetts, 02127, prepared for W/S/M Hingham Properties LLC, 11 sheets.

**Summary of Proceedings:**

This matter came before the Planning Board on the application of W/S/M Hingham Properties LLC Site Plan Review under § I-G and § I-I and a Special Permit A3 Parking Determination and/or Waivers under § V-A, and such other relief as necessary to: 1) allow Health Clubs (Use 4.12A) within the Shopping Center; 2.) incorporate a 2.58 acre parcel of land located at 124 OLD DERBY STREET into the Shopping Center; 3.) construct a 13,000 SF addition to the northerly façade of the Rite Aid building; and 4.) complete related site improvements, including but not limited to grading, landscaping, utility and parking, at the DERBY STREET SHOPPES, 100 DERBY STREET in the Industrial Park and South Hingham Development Overlay Districts in association with a modification to a Special Permit A2 and Variance.

The Planning Board opened the hearing at a joint meeting with the Board of Appeals on May 14, 2018, and the Planning Board subsequently continued the matter to the meetings of July 30, 2018, August 13, 2018, September 24, 2018, October 1, 2018, October 22, 2018, and November 19, 2018 until acting on the site plan review portion of the application at the meeting of December 3, 2018 in the Hingham Town Hall at 210 Central Street. The meetings of July 30, 2018 and September 24, 2018 were continuations only and no testimony was taken. Members of the Planning Board seated on the application were Gary Tondorf-Dick, Judith Sneath, Jennifer Gay Smith, Gordon Carr and Associate Member Ted Matthews. Attorney Robert Devin, Victoria Maguire, Lou Masiello and Sherry Schular of W/S Development, and Taylor Dowdy,

BSC were in attendance for the applicant. Jeffrey Dirk of Vanasse and Associates, Inc. and Suzanne King of The BL Companies served as peer review engineers for the Board. The Board heard and was mindful of public comments throughout the process. Gary Tondorf-Dick missed the meeting of May 14, 2018 but completed a Mullins Affidavit for the file after reviewing the recording and materials.

The applicant introduced the proposal by explaining that the application had several parts to it including the construction of a ~13,000 s.f. addition, relocation of the wastewater disposal area, lowering of the parking field between Rite Aid and Derby Street by approximately 5', and creation of additional parking. An adjacent parcel is being added to this project, and the draft elevations show a lattice or trellis presentation intended to have vines of 4 different types to add interest and texture to this side of the development. The applicants spoke about the parking availability as well as the interest in having approval for a health club use within the plaza but not in a designated location. The Board discussed the modifications to the site as proposed to understand the construction sequence as well as the physical changes. The Board agreed that it was beneficial to incorporate additional lands into the permit as the replacement leaching field, reserve area and permanent and temporary parking had been accommodated on that acreage. The Board noted that a parking and traffic management plan was needed for this property to help during peak demand periods and help drivers navigate the site and understand which exit to use. The Board identified sight line concerns internal to the site as well as a desire to prevent left turning movements onto Derby Street from the service entrance road. The Board reviewed the proposal for temporary overflow parking as part of the parking management plan. The Board noted that they are considering it to also be land banked parking in that if the need for these spaces expands to times outside the Peak Holiday Period the applicant may need to return to the Planning Board to design and construct these spaces. The applicant agreed with that and noted that it made sense. The civil peer review engineer, Suzanne King, P.E., from the BL Companies noted in her May 4, 2018 review that the design met the requirements of the Stormwater Management Standards. The Board then continued to focus on vehicular and pedestrian circulation, landscaping, wayfinding signage and parking details. The applicant submitted and Jeffrey Dirk peer reviewed the traffic and parking management plan and the Board suggested some revisions to the plan. The Board and applicant discussed the construction schedule and acknowledged that the applicant is still waiting for approval from the Board of Health and Department of Environmental Protection with regards to the wastewater treatment facilities. The Board discussed the request for a floating fitness use approval within the plaza as it related to the site plan review and Special Permit A3 decision. The Board also noted that a parallel request is pending with the Board of Appeals to allow Health Clubs within the center. The Board noted during their discussion of the fitness use matters within their purview that the Board of Appeals was yet to act on the request and so any action that they may take was of course contingent upon on action by the Board of Appeals. The Board then discussed what areas of the parking field might be able to support the parking demands resulting from a fitness use and the peak demand periods expected from the fitness use as compared to the shopping center as a whole. The Board reviewed the Fitness Use Locations exhibit and the areas identified to not have fitness uses relative to the parking availability. After discussion the Board identified the units on the south of the Whole Foods store to be shaded in as well, and the applicant team revised the map accordingly.

### **Findings and Decision:**

The project requires a waiver from Section V-A.2. to allow parking areas for the uses to be located on contiguous parcels. The Board made a finding that this is reasonable because the project includes more than one parcel and supports the incorporation of 124 Old Derby Street into the project. The Board then voted unanimously to grant the waiver from Section V-A.2. to allow parking areas for the uses to be located on contiguous parcels. The temporary parking areas require waivers from V-A.4.a (paving not proposed and drainage not reviewed); V-A.5.e (temporary parking spaces require backing into a private way); V-A.5.g. (Requirement for curb or curb stop); V-A.5.k (snow storage areas); V-A.5.l. (review of drainage); and V-A.5.m (landscaping). The Board found that the temporary parking areas are for use during the peak holiday season which is defined as Thanksgiving Day – New Years Day. As such is it reasonable to grant these waivers for the temporary parking areas in light of the fact that before the 2019 holiday season these areas will be reinforced structurally to be able to withstand the use during this time frame. The Board also found that these waivers shall not be construed to apply to the construction of permanent parking in the same location. The Board then voted unanimously to grant the waivers from V-A.4.a, V-A.5.e, V-A.5.g., V-A.5.k, V-A.5.l. and V-A.5.m as requested for the temporary parking areas.

The Board then reviewed the project in accordance with Section V-A, 6 as follows:

*a) The parking is sufficient in quantity to meet the needs of the proposed project;*

#### Findings:

- The fitness use shall be capped at no more than 75 occupants (cumulative total within the Derby Street Shoppes) as defined by the maximum building occupancy of the demised area that is to be occupied by the fitness use pursuant to the Building Code or as determined by the Building Commissioner.
- Fitness uses shall not be allowed on the Whole Foods side of the Pavilion Building that fronts toward Derby Street, or in the units immediately adjacent to the Whole Foods business extending south a distance parallel to the rear of the northern tenant spaces in the Pavilion Building, or in the units immediately adjacent to the Apple Store (i.e., sharing a common demising wall) as shown on the Fitness Use Locations exhibit.
- The parking allocation for the fitness use within the Derby Street Shoppes shall not be less than one (1) space per three (3) occupants. This ratio is appropriate for this site because it is shared parking and the uses have non-coincident peak parking demand. Staff parking is not included in this requirement.
- A Parking and Traffic Management Plan has been submitted to guide operations and reviewed by Jeffrey Dirk, Vanasse and Associates, the peer review engineer for the Board.
- The Parking and Traffic Management Plan needs to be revised to incorporate all of the actions that the applicant has agreed to as part of the peer review process.
- The Peak Season Parking Management plan defines the peak season as “the holiday shopping period from Thanksgiving through New Year’s Day each year”. The temporary parking

areas are dimensionally compliant and will be striped but do not show trees, curbing or curb stops and have not had the drainage designed.

b) *Pedestrian access and circulation has been provided for;*

Finding: As part of the parking and traffic management plan the Applicant has proposed to restripe and improve the visibility of the crosswalks within the property. The Applicant has proposed improving the wayfinding signage to help inform drivers as they navigate the site.

c) *New driveways have been designed to maximize sightline distances to the greatest extent possible;*

Finding: Left turn maneuvers onto Derby Street from the east service driveway are unsafe and also difficult as traffic volumes continue to increase on Derby Street. The Applicant has agreed to investigate the potential design and construction of a raised island or physical barrier to prohibit left turn exit maneuvers in this location.

d) *It is impractical to meet these standards and that a waiver of these regulations will not result in or worsen parking and traffic problems on-site or on the surrounding streets, or adversely affect the value of abutting lands and buildings, and*

Findings:

- The temporary parking areas are intended for use during the Peak Holiday Season which is defined as Thanksgiving – New Years’ Day. The waivers requested for the temporary parking areas relate to design and construction.
  - The temporary parking areas are being considered land banked parking areas and if they are needed beyond the Peak Holiday Season the applicant must return to the planning board to have the design reviewed prior to construction of these areas.
- e) *The granting of relief is consistent with the intent of this By-Law and will not increase the likelihood of accident or impair access and circulation.*

Finding: Yes.

The Board then Moved, Seconded and So Voted to Approve the Special Permit A3 Parking Determination for W/S/M HINGHAM PROPERTIES LLC as shown on the plans titled “Derby Street Shoppes Expansion 100 Derby Street Hingham, Massachusetts”, dated March 9, 2018 and revised to July 13, 2018, prepared by the BSC Group, 803 Summer Street, Boston, Massachusetts, 02127, prepared for W/S/M Hingham Properties LLC, 11 sheets., based on the representations made at the hearings and the Board’s findings, with the Traffic and Parking Management Plan and waivers, and subject to the following conditions:

1. The fitness use is capped at no more than 75 persons (cumulative total within the Derby Street Shoppes) as defined by the maximum building occupancy of the demised area that is to be occupied by the fitness use pursuant to the Building Code or as determined by the

Building Commissioner;

2. Fitness uses are not allowed on the Whole Foods side of the Pavilion Building that fronts toward Derby Street, or in the units immediately adjacent to the Whole Foods business extending south a distance parallel to the rear of the northern tenant spaces in the Pavilion Building, or in the units immediately adjacent to the Apple Store (i.e., sharing a common demising wall) consistent with the Fitness Use Locations exhibit as submitted.
3. The parking allocation for the fitness use within the Derby Street Shoppes shall not be less than one (1) space per three (3) occupants.
4. The Applicant must submit a Final Parking and Traffic Management Plan revised to reflect the representations and agreements made during the hearing process.
5. The Applicant shall implement the wayfinding signage installation prior to the issuance of building permit for the expansion. The Applicant shall notify the Planning Board in writing when installation has been completed.
6. All temporary parking areas shall be constructed using the same reinforced treatment that is being used for the proposed temporary parking areas to the west of the Kohl's building.
7. The temporary parking areas are for use during peak holiday season (Thanksgiving to New Year's Day) and is being considered also to be Landbanked Off Street parking. If the applicant finds there is a need to utilize this parking outside of this specified timeframe this shall be considered evidence of the inadequacy of the permanent spaces provided and the applicant must return to the Planning Board for review of the design and construction of this parking.
8. Major construction activities associated with the expansion that would reduce the amount of available parking over current (pre-construction) conditions shall be scheduled so as not to occur during the peak holiday shopping season (Thanksgiving to New Year's Day), unless the applicant can demonstrate efforts that includes construction phasing and other accommodations to off-set the net loss in parking within the site.
9. The Applicant shall conduct a parking monitoring program for the entire site that would consist of:
  - i) parking demand observations conducted over a continuous 12-hour period (7 AM to 7 PM) on a weekday and a Saturday; and ii) parking occupancy within the site. The observations shall be conducted once during the peak holiday shopping season (between November 27<sup>th</sup> and December 24<sup>th</sup>) and once during spring (April, May or June) or fall (September or October). The results of the parking monitoring program shall be summarized in a written report (the "Parking Monitoring Report") provided to the Director of Community Planning within one (1) month of the parking observations and should include the following information:

Land uses and size (no. of seats, space occupied (sf) and/or occupancy (persons), as appropriate) for the uses located within the overall site at the time that the parking demand observations were performed;

Parking supply (total number of parking spaces provided)

Number of occupied parking spaces reported in 30 minute intervals during the observation period

Number of available parking spaces reported in 30 minute intervals during the observation period (i.e., parking supply – no. of occupied spaces)

Peak parking demand period

Average duration of stay; and

Graphical representation of parking occupancy within the site during the peak parking demand period

To the extent that the observed parking demand exceeds the parking supply within the overall site, the Applicant shall identify and undertake corrective measures to address the parking including but not limited to construction of land banked parking after Site Plan Review for drainage & design standards. These measures should be documented in the Parking Monitoring Report along with the responsible party and time frame for implementation. The initial parking monitoring program should be performed prior to the issuance of a Certificate of Occupancy for the Project in order to establish a baseline condition and then thereafter within one year of occupancy of the Project (defined as the tenancy/leasing of 80 percent or more of the gross leasable area created by the Project).

10. Full implementation of the signage and pavement marking improvements shown on the plans titled “Directional Signs and Locations” and “Pedestrian Routes”, and as supplemented in the narrative of the Traffic and Parking Management Plan must be implemented prior to the issuance of a Certificate of Occupancy for the project.
11. Applicant must submit a revised Site Plan and Traffic and Parking Management Plan to correspond with the representations and agreements made at the hearings and conditions of approval.
12. Prior to the issuance of a building permit for the expansion of the Derby Street Shoppes, the Applicant shall make application to the Massachusetts Department of Transportation (MassDOT) for approval to design and construct a raised island or other suitable barrier to physically prohibit left-turn exiting maneuvers from the east service driveway, and install signage noting “no left turn”. To the extent that MassDOT approves the modifications to the east service driveway and any additional signage, the Applicant shall design and construct the improvements and install the signage. The Applicant shall keep the Planning Board and Board of Appeals apprised of the progress on this matter and provide any final approval letters and design plans or specifications for the files.

13. If the Temporary Parking Areas are needed outside of the Peak Holiday Season the applicant must return to the planning board to have the parking design reviewed prior to construction of these areas which would then be considered permanent parking and the expectation is that the design inclusive of drainage, pavement and landscaping would comply with the regulations.
14. The Temporary Parking Areas will be structurally reinforced as proposed during the hearing prior to use after January 1, 2019.

Town of Hingham Planning Board,

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Gordon M. Carr, Chairman

In Favor: Matthews, Carr, Tondorf-Dick, Sneath, Gay Smith

Opposed: none

Cc: Town Clerk, Building Department, ZBA, R. Devin, BOH, Assessors, Police Chief, Fire Chief, Fire Prevention, DPW, R. Fernandes, J. Dirk,